***Definitions of Foreground and Background Intellectual Property – DRAFT (April 2020)***

**BACKGROUND**

External funding is an essential component of a research institution’s ability to undertake and sustain research and education. Research performed, at times, builds upon a laboratory’s previous work - which can lead to blurred lines of discovery, uncertainty of rights in intellectual property, and, ultimately, difficulties in identifying commercial partners.

NFRI recommends that research institutions and funders establish clear and concise definitions of intellectual property to facilitate royalty-sharing discussions and the commercialization of the innovation.

**Foreground Intellectual Property**

Foreground Intellectual Property should generally be defined by the parties to include any statutorily protectable intellectual property created and/or first reduced to practice in the course of performance of work under the agreement between the parties.

Generally, foreground intellectual property should not “reach through” to new discoveries made after the project between the parties is completed. Such arrangements often stifle further development and make it difficult to identify a commercialization partner.

**Background Intellectual Property**

Background Intellectual Property should generally be defined by the parties to include statutorily protectable intellectual property that was created and/or first reduced to practice prior to or outside the scope of the agreement, access to which would be required or needed to practice the results of the research by a commercial partner.

Background intellectual property may include intellectual property of either party or a third party. The research institution may not know of background intellectual property at the commencement of research but should agree to some level of diligence to reasonably ensure the opportunity to commercialization the results of the research.

It is foreseeable that the parties would treat royalties directly attributable to background intellectual property differently in any royalty-sharing schema.